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2

CF0000111933

Division Bench (Civil)

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

Misc. Petition No. 521 of 1993.

PETITIONER :- Sibo Ram ~~Sukram~~ Rayak aged about 42 years, son of Vansingh Rayak- Cultivator - Resident of Dhobiguda - Jagdalpur Distt. Bastar M.P.

versus

RESPONDENTS :- 1. Board of Revenue - Madhya Pradesh Gwalior - M.P.

2. Seva Sahkari Samiti Maryadit Pandnar, Through Kendriya Sahkari Bank Maryadit - Jagdalpur, Distt Bastar M.P.

3. Sahayak Panjiyak - Sahkari Samiti Jagdalpur - District Bastar M.P.

(6990)

Filed on 20/11/93
by Shri R.K. Shukla Advocate
R.to D.R.
Dt. 20.11.1993

PETITION UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA

23

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

Single Bench: Hon'ble Shri Satish K. Agnihotri, J.

WRIT PETITION NO. 521OF 1993

Sibo Ram Rayak

Versus

Board of Revenue & others

Present: Shri Vinay Pandey, counsel for the petitioner.
Shri Praful Bharat, counsel for the respondent No. 1.
Shri Pankaj Shrivastava, counsel for the respondent No. 2.

ORAL ORDER

(6TH December, 2005)

The following Order of the Court was passed by **Satish K. Agnihotri, J : -**

Learned counsel for the petitioner submits that the petitioner was working as Sabha-Prabandhak in Sewa Sahkari Samiti Maryadit, Pandnar, District Bastar. The petitioner was dismissed from the service by order dated 29.7.1975, on the charge of criminal breach of trust to the effect that the petitioner had embezzlement sum of Rs. 1693/. The petitioner was prosecuted in the Court of the Chief Judicial Magistrate, Jagdalpur in Criminal Case No. 2031/76 for offence punishable under Section 409 of the Indian Penal Code. The petitioner was convicted and sentenced for two years Rigorous Imprisonment with a fine of Rs. 500, by order dated 20.4.1979 passed by the Chief Judicial Magistrate, Jagdalpur.

Thereafter, the petitioner had filed an appeal before the 2nd Additional Sessions Judge, Jagdalpur. The 2nd Additional Sessions Judge, Jagdalpur set aside the conviction and sentence passed by the Chief Judicial Magistrate, Jagdalpur and acquitted the petitioner from the charges, by his order dated 21.7.1979.

2. In the meantime, the proceeding was initiated for recovery of a sum of Rs. 1693/- against the petitioner. The Assistant Registrar, Co-operative Societies, by his order dated 29.3.1985, dismissed the petition of the Respondents/Samiti on the ground that the petitioner was acquitted by the 2nd Additional Sessions Judge, Jagdalpur for the charges of criminal breach of trust, as such no proceeding of recovery could be made against the petitioner. The Respondents/Samiti filed an appeal before the Joint Registrar Co-operative Societies, Bastar, Jagdalpur, who upheld the order dated 29.3.1985 passed by the Assistant Registrar Co-operative Societies, Jagdalpur and dismissed the appeal, vide his order dated 24.8.91.

3. The petitioner filed an application Under Section 80 of the Madhya Pradesh Co-operative Societies Act, 1960 before the Board of Revenue praying that the petitioner be reinstated in service with arrears of back wages. The said application was filed on the ground that the petitioner had been acquitted from the alleged charges made by the respondents/Samiti from the Court of the 2nd Additional Sessions Judge, Jagdalpur, as such the petitioner was entitled for reinstatement with back wages. The Board of Revenue vide its order dated 8.5.1992, directed re-appointment of the

petitioner holding that the petitioner was not entitled to any back wages.

4. The petitioner has filed this petition under Article 226/227 of the Constitution of India in this court seeking relief that the petitioner be granted back wages for the period, for which he was out of service. The petitioner has sought following relief,

> *"(i) That the petitioner should be taken back in the post and should be allowed to be in the service as if there had been no order of his dismissal alike to one dated 29.7.1975, this order being ineffective from the date of inception.*
>
> *(ii) That the petitioner should be deemed to be in continuous service from the date of his first original appointment and he should be accordingly entitled to all the advantages of pay etc. accuring thereby accordingly."*

In the course of arguments, the petitioner confines his prayer only to the grant of back wages as he was already re-appointed in service vide order dated 8.5.1992.

4. Having heard learned counsel for the parties and perusing the documents appended to the petition, I am of the view that the petitioner has confined his prayer before the Board of Revenue to the same relief as granted by the Board of Revenue in other identical matter namely Harcharan Vs. Rajendra Vipnan Co-op. Society Ltd, Baldevgarh (1984 Revenue Nirnay 235). This is evident from para 4 of the impugned order also that the Board of Revenue, after consideration of the prayer confined to the same relief as granted in Harcharan's Case (supra), directed the respondents/Samiti to

re-appoint the petitioner without back wages. It was further made clear that the appointment would be a new appointment. In case of Harcharan (supra), the Board of Revenue had granted the similar relief of re-appointment without back wages.

5. Learned counsel for the petitioner further submits that the petitioner be granted back wages. It is not urged before this court that the order of re-appointment was bad. In case of re-appointment, there is no question of granting back wages as even the continuity of service was not granted by the Board of Revenue. The petitioner has also not challenged the part of re-appointment of the impugned order.

In view of the foregoing, there is no merit in the case. The petition is dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Bablu